IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

Crl.MC.No. 2492 of 2007()

CP.65/2005 of JUDL.MAGISTRATE OF FIRST CLASS, PARAVOOR

.....

PETITIONER:

P.JAYAN, S/O.PADMANABHAN,
PARAYIL VEEDU,
WEST OF GOVT.HOSPITAL,
THONIPARA DESOM,
AYIROOR VILLAGE,
CHIRAYINKIL TALUKKU,
TRIVANDRUM DIST.

BY ADV. SRI.V.VENUGOPALAN NAIR

RESPONDENTS:

---

1. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
PARAVOOR, KOLLAM.

BY PUBLIC PROSECUTOR ADV.SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 03/08/2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2492 of 2007

Dated this the 3rd day of August, 2007

O R D E R

The petitioner faces indictment in a prosecution for the offence punishable under Section 8 of the Kerala Abkari Act. The alleged incident took place on 18.08.03. The petitioner was not arrested in the course of investigation. Investigation is now complete. Final report has been filed. The committal court has taken cognizance. Committal proceedings has been registered. A warrant of arrest has been issued against the petitioner. The petitioner apprehends imminent arrest.

2. According to the petitioner, he is absolutely innocent. His omission to appear earlier was not wilful. The petitioner is now willing to appear and apply for bail and co-operate with the court for expeditious disposal of the case. The petitioner apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. Such petition for bail has to be considered in the light of the decision in **Sukumari v. State of Kerala** [2001(1) K.L.T 22] and **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339]. Appropriate direction may be issued under Section 438 and/or 482 Cr.P.C may be issued, submits the learned counsel for the petitioner.

3. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438

Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in these cases.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary.

5. This Crl.M.C is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

6. Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-

//True copy// PA to Judge